

INITIAL STATEMENT OF REASONS

RN 04-01

ADMINISTRATIVE APPEALS

Existing regulations, CCR §§ 2050 through 2057 set out the administrative appeal process whereby “[a]ny person under the Board’s jurisdiction may appeal any decision of the Board which affects that person”

In re Muszalski (1975) 52 Cal.App.3d 500, recognized that agencies “should be given a chance to discover and correct its own errors, [administrative appeals]” but in doing so, they must provide a means for prisoners and parolees to exhaust their administrative remedies before they can sue for relief in the California courts.

CCR § 2051 states the “grounds” for appeal, as follows: “(a) The decision was based on incorrect or incomplete information which, if correct or complete, might have resulted in a different decision. (b) An error of judgment led to a decision which is unreasonable in view of the facts. (c) The board did not have the legal authority to make the decision. (d) The decision violates the Board Rules.”

CCR § 2052 states the prisoners’ and parolees’ responsibilities in filing an appeal. The prisoner or parolee must fill out the appropriate forms and provide a brief statement of the grounds for appeal, the decisions desired, and all arguments in support of the appeal. The appeal shall then be submitted to the appropriate representative within 90 days of written confirmation of the decision.

Pursuant to CCR § 2054, after receiving an appeal, the Board Appeals Unit may make the following decisions: (1) Order a new hearing—if an error or omission of consequence is confirmed, an error of judgment occurred, or the decision was not legally authorized; (2) Deny the appeal if the decision is within established board policy, any factual error was harmless or the decision was reasonable under the circumstances of the case; (3) Make a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee; or (4) Dismiss the appeal if it should be handled through the Department of Corrections’ appeals system.

The Federal court, in *Armstrong v. Davis* [USDC, Northern District, Case No. C 94-02307 CW], issued a permanent injunction which ordered the Board to provide effective assistance to parolees and prisoners who could not use or understand the appeal process. The court ordered that any Americans with Disabilities Act (ADA)-related appeals be decided within 30 days. In addition, the court ordered the Board to develop and implement a new grievance procedure for processing any complaints of denials of requests for accommodations. All such grievances are to be decided prior to the hearing. Accommodations for prisoners or parolees with disabilities are currently addressed in CCR § 2057.

The most recent regulatory action (concerning Appeals) which became effective in November 2003, established timeframes within which the Board Appeals' Unit shall respond to appeals so that prisoners and parolees are able to exhaust their administrative remedies and seek relief through the courts. These time limits are set forth in CCR § 2054(b).

The repeal of CCR §§ 2050 through 2057 is imperative due to recent budgetary reductions at the Board and impending litigation, i.e., *Valdivia v. Schwarzenegger* [USDC-E.D. Case No. Civ. S-94-0671], which will restructure the Board's parole revocation process. The plan submitted to the court referred to as the *Valdivia* Remedial Plan (VRP) will create a significant new workload and a shift of the parole revocation process from the CDC (California Dept. of Corrections) to the Board. Further, the Board's lengthy response time in answering appeals, due to limited staff, has interfered with prisoners and parolees timely seeking relief through the courts. The removal of the appeals function will allow prisoners and parolees to seek immediate relief (through the courts) once they receive the written decision.

In place of the appeals function, the Board plans to implement a "quality control unit" that would, to the extent staffing is available, equally review hearing decisions of prisoners and parolees, ensuring effective and uniform determinations. This alternative is important to victims, the public, and prisoners/parolees in which the criminal justice system ensures due process.

Specific amendments are as follows:

Repeal of CCR §§ 2050-2052 and 2054-2056. These sections will be repealed for the reasons set forth above.

Amendment of CCR §§ 2072-2074. Amendments to these regulatory sections are necessary to delete any reference to appeal rights of the "multijurisdiction" prisoner or parolee, consistent with the repeal of the Board's appeals' function. New language at CCR § 2073 will implement language specified at proposed (new) CCR § 2251.5, giving the disabled (multijurisdiction prisoner or parolee) the right to file a *grievance* pursuant to that section.

Amendment/Renumbering of CCR § 2057. As a result of the repeal and pursuant to the *Armstrong* injunction, CCR § 2057, currently entitled, "Disabled Persons," will be renumbered to *new* CCR § 2251.5—"Americans with Disabilities Act." This section, in addition to setting out the rights of disabled persons pursuant to the ADA, will delete language referring to the current appeals process, and implement language defining the grievance process set forth in the *Armstrong v. Schwarzenegger* Revised Permanent Injunction.

New citations have been added to specific sections under "Note" to indicate the statutes and/or cases being implemented.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The Board must determine that no reasonable alternatives considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses. However, no adverse impacts on small businesses are anticipated, given the subject area of this action.